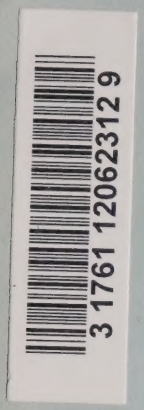
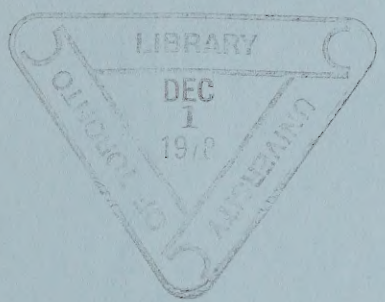


MINISTRY OF TREASURY, ECONOMICS
AND INTERGOVERNMENTAL AFFAIRS

LOCAL GOVERNMENT DIVISION

BULLETIN NO: 13

LABOUR RELATIONS -
COMPONENTS OF A
COLLECTIVE AGREEMENT



THE HONOURABLE W. DARCY McKEOUGH

TREASURER OF ONTARIO AND
MINISTER OF ECONOMICS AND
INTERGOVERNMENTAL AFFAIRS

RENDALL DICK, Q.C.

DEPUTY TREASURER OF ONTARIO AND
DEPUTY MINISTER OF ECONOMICS
AND INTERGOVERNMENTAL AFFAIRS

AUGUST 1978

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Introduction

This bulletin is one of a series produced by the Local Government Division of the Ministry of Treasury, Economics and Intergovernmental Affairs.

The subject of this bulletin will be of practical interest to those municipalities that have collective agreements with trade unions and employee associations. It will also be of interest to those municipalities that may, sometime in the future, be required to formulate a collective agreement for the first time. First agreements become the point of departure for subsequent ones; their importance should not be underestimated.

The purpose of the bulletin is to describe, in compact form, the provisions that are required by law to be in every collective agreement and to illustrate some of the other more popular provisions that are also found in collective agreements. It is also hoped that this bulletin will take some of the mystery out of the subject of collective agreements, and demonstrate that they need not be so complex as is sometimes believed.

COMPULSORY CLAUSES

The Ontario Labour Relations Act governs collective bargaining and collective agreements in local government in the Province of Ontario. This Act provides that, in every collective agreement, certain provisions must be included. If these provisions are not written into a collective agreement, then the Act says they are deemed to be included.

The following clauses are the provisions that the Act requires. They are included here in discussion form; for complete and accurate information you should of course refer to the statute itself.

Recognition Clause

All collective agreements should have a recognition clause by which the employer recognizes that the union is the exclusive bargaining agent for the employees in a particular bargaining unit. In fact, The Labour Relations Act provides that every collective agreement shall be considered to recognize the union that signs the agreement as exclusive bargaining agent for the employees covered by that agreement (Section 35(1)). In other words, there is recognition of the union, whether or not a recognition clause is written into the agreement. The clause should describe, as exactly as possible, the employees who are covered by the agreement. A typical recognition clause might read:

> *"The Corporation recognizes the Union as exclusive bargaining agent for all hourly-rated employees, except foremen, persons above the rank of foremen, office employees, supervisors and plant guards, at the Front Street Maintenance Garage."*

The reason for this clause is to prohibit another union from dealing with the municipality for these employees during the term of the agreement. It is written in words that are as exact as possible to ensure that neither party (the municipality or the union) can claim that employees outside the specific bargaining unit should be included, or that others should be excluded.

No-Strike,No-Lock-Out Clause

Every collective agreement must provide that there will be no strikes by the union and no lock-outs by the employer while the collective agreement is in effect. (The Labour Relations Act, Section 36(1)). If this clause does not appear in a collective agreement, The Labour Relations Act provides that the agreement is deemed to contain the following provision;

> *"There shall be no strikes or lock-outs so long as this agreement continues to operate."*

The reason for having such a clause in a collective agreement is fairly obvious. The purpose of The Labour Relations Act is "to further harmonious relations between employers and employees" and this would not be accomplished if the employer were free to lock-out and the union were free to strike at any time. The no-strike clause provides assurance to the employer that his production will be steady and uninterrupted during the term of the agreement. It provides assurance to the union that there will be regular employment for its members during the term of the agreement. It provides assurance to the Province that there will be a minimum of disturbances in employer-employee relations, and consequently a more smoothly running economy.

Union-Dues Clause

It is a requirement that, where the union requests, a collective agreement must contain a clause providing that, on written request of an employee, his union dues will be deducted from his wages and remitted to the union.

Grievance Clause

Every collective agreement must provide that all differences between the employer and the union involving the agreement must be settled by final, binding arbitration. In addition, it must provide that there will be no stoppage of work because of such a difference. This, of course, means no strike or lock-out. (The Labour Relations Act. Section 37(1)).

In most collective agreements the final, binding arbitration is provided for as the last step in a grievance procedure. A grievance procedure simply provides a formal series of progressive steps to resolve differences between the employer and the union arisisg out of the terms of the collective agreement. A grievance noramlly arises when an employee feels he has been treated unfairly according to his (and the union's) understanding of the terms of the agreement; the union normally represents the employee (provided he is a member of the union) throughout the entire procedure.

By way of example, Step One of a grievance procedure might call for the review of the grievance by the foreman, with an answer to be given verbally to the grievor, i.e., the employee who has grieved. Step Two might provide, if the grievor was not satisfied by the answer, for a review by his Section Head, with an answer to be given in writing to the grievor. When the grievor is not satisfied with the written answer, Step Three might provide for a review by the Department Head, again with an answer in writing to be given to the grievor. It the grievor is still not satisfied with the answer, Step Four might be the one that provides for final, binding arbitration.

It is important to note that there may be greater or fewer than four steps in a grievance procedure, depending upon the specific collective agreement. For example, a municipality may be too small to have that many levels of supervision. The Act does not require four steps; in fact, the Act does not even require a grievance procedure. It is, however, a good idea to have a grievance procedure in your collective agreement; it ensures that each grievance is handled in a fair and orderly manner.

Section 37 of The Labour Relations Act does have a rather lengthy clause concerning the arbitration of grievances, and this clause is deemed to be contained in any collective agreement that does not provide for grievance arbitration. This section of the Act also goes on at some length to lay down the actual arbitration procedure, including appointment of arbitrators, payment of arbitrators, time limits, powers of arbitrators and so forth.

Term of Agreement

Section 44(1) of The Labour Relations Act states that, if a collective agreement does not provide for a specific term of operation, or provides for a term of less than one year, it shall be deemed to have a term of one year from the date it started to operate. Other subsections of section 44 allow continuation of an agreement during bargaining and prohibit the agreement from being terminated during its term of operation.

Virtually every collective agreement does have a clause specifying the term of the agreement.

Permissive Clauses

In addition to the clauses that are required by The Labour Relations Act to be included in collective agreements, there are clauses that the Act permits to be included. The employer and the union may agree that membership in the union is a condition of employment; that preference of employment will be given to members of the union; that payment of dues or contributions to the union is required of all members of the bargaining unit. (The Labour Relations Act, Section 38(1)(a)).

The union and the employer may also agree to permit an employee who represents the union to conduct union business during working hours without loss of time worked or wages. (The Labour Relations Act, Section 38(1)(b)). The union and the employer may also agree to permit the union to use the employer's premises for union business without payment. (The Labour Relations Act, Section 38(1)(c)).

OPTIONAL CLAUSES

In addition to those clauses that are required by The Ontario Labour Relations Act, there is an almost endless choice of other clauses that may be included in a collective agreement. These are determined by the issues that are most important to the individual municipality and union.

The following is a selection of the more common clauses contained in municipal collective agreements.

Preamble or Purpose Clause

Collective agreements usually start off with a preamble, which contains the purpose of the collective agreement. Many preambles are nothing more than motherhood statements and are written in such flowery language that it is virtually impossible to live up to the sentiments they express.

The preamble should be a factual statement of what the purpose of the agreement really is. It should not include meaningless platitudes or "love and affection" phrases. It should not contradict any of the other clauses in the agreement. It should be brief and to the point. For example:

> *The purpose of this Agreement is to establish and maintain wages, hours of work, working conditions and terms of employment for all employees who are subject to the provisions of this Agreement and to establish and maintain a procedure for the prompt and equitable handling of grievances.*

Definitions or Interpretation Clause

Throughout nearly all collective agreements, certain words and phrases are used repeatedly and it is helpful, if not essential, to include a clause defining those words and phrases. This will not only ensure consistency in terminology throughout the agreement, it will also help to avoid confusion, misinterpretation of the contract, grievances and effects which might be the opposite to those that were intended.

Examples of words that might be included are; "union" (does it mean the local, the national body or both.) "employee" (does it mean all employees or only full-time employees?); and "grievance" (is it an alleged violation of a specific article of the agreement, or is it a complaint of unfair treatment? - it should be the former). These are just a few; there are, of course, a great many other terms that could be defined to ensure that the parties have a mutual understanding of their meaning.

Management-Rights Clause

More and more collective agreements are including a clause to reserve certain rights for management, i.e., the employer. The intent of such a clause is fully understandable; however, it frequently gets an employer into more trouble than it saves.

Many management-rights clauses try to list everything that is a right of management. This is almost impossible; invariably something is overlooked. The prevailing opinion today in the interpretation and administration of collective agreements is that, where management rights are specifically stated, anything that is not included, whether purposely or by oversight, may not be the exclusive right of management. By leaving out an item, management has admitted it does not have the right to make exclusive determination in that area.

The opposite, preferred approach is to have the clause provide that management reserves all its rights except those that are specifically included in the collective agreement. A phrase such as "Except to the extent expressly abridged by specific provisions of this agreement, the Corporation reserves and retains, solely and exclusively, all its inherent rights to manage the business of the Corporation" is an example. If, for one reason or another, a listing of the rights must be included in the clause, phrases such as the following should be considered for use; "The Corporation has the exclusive right to manage its business, including but not limited to...." or "The sole and exclusive rights of the Corporation, which are not abridge by this agreement, shall include but are not limited to...."

Wages, Pension and Other Benefits

Every collective agreement, of course, has clauses dealing with these three aspects - probably the most important aspects - of collective bargaining. There is not really much that can be said about these clauses except that they simply list the specific rates of pay, pensions and benefits that are agreed to at the bargaining table.

Vacation Clause

This clause should define vacation eligibility in terms of the number of days or weeks vacation per number of years service. If vacations are granted in weeks, a vacation week should be defined. For example; "A vacation week shall commence on a Monday and end on a Sunday, and all vacations shall be considered to start on a Monday morning. A vacation week shall mean a calendar week of seven days with five days pay at straight time rates." As shown, the rate at which vacations are to be paid should be stated in the agreement. In most agreements, the employee is entitled to the wages he would be paid for a normal work week, exclusive of overtime and other premium payments. The number of years service should also be defined, and there should be provision for the amount of vacation pay to be paid on termination.

The clause should contain a stipulation as to whether vacations must all be taken at the same time or if they may be taken in broken periods, such as one week at a time, and if they may be accumulated from year to year. A short table illustrating the vacation entitlement of employees who have worked less than a calendar year is also a good idea.

It is in the interests of both the employer and the employees that the employer may limit the number of employees that may be absent on vacation at any one time. Otherwise, if too many employees are away at once, the employees remaining at work may complain legitimately about too large a workload and/or the work of the municipality may suffer.

Statutory-Holidays Clause

Most collective agreements have a fairly detailed clause about statutory holidays. First, the clause should list those statutory holidays for which wages

will be paid, even though no work is performed on those days. It should spell out what is to happen when a holiday falls on a Saturday or Sunday. (Will the next regular working day be observed in lieu of the holiday? or will the employees simply be given an extra day's pay?) It should indicate what will happen if the employee is absent on vacation or on sick leave or on any other leave such as jury duty or bereavement leave. (For example, some agreements require that an employee must work the regular working day before and after the holiday in order to be eligible for payment).

The clause should also state what is to happen if an employee is required to work on a statutory holiday. (Will the employee be given an alternate day off with pay at another time? Who will determine when the day off is to be taken? Or will the employee be paid his regular pay plus holiday pay? Will there be any premium for working on the holiday?)

Hours-of-Work Clause

This clause should spell out the normal starting and finishing times including those for employees who work shifts. (It may also include the right of the Corporation to re-establish these times.) It should state the normal hours of work per day and per week. Care should be taken to ensure that this clause does not contain provisions that conflict with those contained in the overtime clause.

Overtime Clause

Overtime should be defined as to whether it occurs after a certain number of hours per day, a certain number of hours per week or on any other basis. The rate of compensation for overtime worked should be laid down (time and one-half; double time) including whether or not and on what basis compensating time off will be granted (equal time off; one-and-one-half time off).

This clause should indicate the basis upon which overtime work will be distributed among employees, whether by seniority, on a rotation basis or by any other method. There should also be a provision to prohibit pyramiding of premium payments, such as paying overtime rates on a shift premium. There may also be an indication of the time limits within which the overtime will be paid.

Leave-of-Absence Clause

Nearly all collective agreements have at least one clause dealing with leaves of absence. Some types of leaves of absence, such as bereavement leave, are usually granted with pay. Varying lengths of leave are granted depending upon the relationship of the employee to the deceased and the clause usually contains a listing of how many days are allowed for each category of relative (e.g., up to three days for husband or wife, mother, father, brother, sister, son, daughter and so forth).

Leave of absence meriting only partial pay would be governed by a separate clause. Leave for jury duty sometimes falls in this category where payment is made to provide the difference between jury pay and a normal day's wages. In some cases, the agreement will also permit the employee to take vacation in order to undertake jury duty. Leave for militia duty would also come under this category.

A third type of leave is leave of absence without pay. Generally, a clause in a collective agreement will state that such leaves are granted only at the discretion of the employer. The clause may not list the reasons, but simply state that each request will be assessed on its merits. Reasons for such leave might be for education, extended vacation or compassionate leave. In other cases, the clause will list reasons, such as maternity leave and union business and provide that the leave will be granted provided that certain criteria are satisfied by the employee.

A leave-of-absence clause should indicate what will happen to benefits and conditions of employment that relate to length of service. These would include pensions, vacations and seniority. It should also state what is to be done to maintain certain benefits during the absence. These would include health insurance and life insurance. The clause should provide for the action to be taken if the employee does not return to work at the expiry date of the leave.

Seniority Clause

Seniority is perhaps the only thing about an employee's working relationship that can be measured accurately, without bias and equally by the employee, the union and the employer. Consequently, it is highly important in collective agreements. Seniority is used to determine a number of actions in a collective agreement

such as shift preference, promotion (normally only after reviewing qualifications and performance), lay-off and recall and choice of vacations. (In fact, seniority is used in much the same manner for employees who are not covered by a collective agreement.)

A seniority clause first of all should define seniority. (Does it mean length of continuous service or does it include broken periods of employment? Is seniority overall service or is it also length of time on a particular job?) The clause should indicate the length of time new employees are "on probation" before being placed on a seniority list and whether they may be released without recourse during this probationary period. It should indicate whether seniority operates within a department, a section, a job, the whole organization or a combination of these depending on the specific purpose of the application of the seniority (e.g., promotion, lay-off or vacation choice).

In the case of promotion, the seniority clause should state how much weight should be given to the seniority factor (Does it apply only where two candidates are considered to be equal in performance? Does it prevail over all other considerations?) It should state how seniority is to be applied in the case of lay-off and recall (Is the person with the least seniority the first to be laid off" Is lay-off to occur by job, section or department? Are bumping rights permitted?)

Summary

The foregoing are just some examples of the more common clauses found in collective agreements in local governments. Not everything to be found in collective agreements is discussed here; the list of provisions that are in agreements is just about endless. Almost everything the employer and the union wish to agree on may be included in an agreement. The needs will vary, of course, depending on the individual situation. (There are some exceptions; for example, the union and the municipality may not agree to discriminate against applicants for employment on the basis of race or colour. (Discrimination on the basis of race or colour is among the practices prohibited by The Ontario Human Rights Code.)

A collective agreement should not be a complex document that can be understood only by the legal profession and requires a legal opinion in almost every situation. The day-to-day administration of the agreement is undertaken on the one hand by foremen and first-line supervisors and on the other hand by union stewards and the employees themselves. It is therefore essential that the agreement be written in language and terminology that can be understood by everyone.

Unfortunately, however, the words one chooses to express an intent do not always have the same meaning to all people. In addition, and above all, a collective agreement is an enforceable legal contract. Thus, it is to your advantage to seek advice from a solicitor, or an expert in labour relations, before you commit your municipality to a written collective agreement.

Do you want more information on this subject? Ask any of the field officers of the Local Government Division. They are located at these addresses:

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